



SO ORDERED.

SIGNED this 13 day of September, 2007.


J. Rich Leonard
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

IN RE:

SOUTHERN PRODUCE
DISTRIBUTORS, INC.,

DEBTOR.

CASE NO. 03-02838-8-JRL

SOUTHERN PRODUCE
DISTRIBUTORS, INC.,

PLAINTIFF,

v.

BEN F. LANDRETH,

DEFENDANT.

ADVERSARY PROCEEDING
NO. L-06-00222-8-AP

ORDER

This case is before the court on the debtor's motion for an order (i) enforcing the court-approved settlement agreement and mutual release, and (ii) to show cause why Ben F. Landreth d/b/a Ben F. Landreth & Son and d/b/a Landreth Farms (Landreth) should not be held in contempt. On September 10, 2007, the court conducted a hearing on this matter in Raleigh, North Carolina.

The debtor, Southern Produce Distributors, Inc. (Southern Produce), initiated this adversary proceeding against Landreth on September 13, 2006 for the turnover of produce bins to Southern Produce and for damages for the value of the produce bins, lost profits, and reasonable rental for the produce bins. After negotiation, the debtor and Landreth reached an agreement to settle the adversary proceeding and executed a Settlement Agreement and Mutual Release (Settlement Agreement). A Motion for Authority to Compromise and Settle Adversary Proceedings was filed in Southern Produce's Chapter 11 case on January 15, 2007 and this court entered an Order Approving the Compromise and Settle Adversary Proceeding on February 16, 2007. The Settlement Agreement specifically required Landreth to (i) pay \$5,760.00 to Southern Produce by February 27, 2007, and (ii) return 288 produce bins belonging to the debtor by May 30, 2007 in good condition, or pay to the debtor the market replacement cost of not less than \$150.00 per bin, to be determined as of May 30, 2007. The debtor contends that Landreth has failed to comply with the terms of the Settlement Agreement. The debtor requests that the court enter an Order compelling Landreth to specifically comply with the terms and conditions of the Settlement Agreement, including, without limitation, (i) the payment of \$5,760.00 to Southern Produce, (ii) the immediate return of all 288 produce bins to the debtor, and (iii) the payment of the market replacement cost, of not less than \$150 per bin, for each produce bin not returned to the debtor in good condition.

It is undisputed that Landreth has failed to comply with the terms of the Settlement Agreement. First, Landreth failed to pay to the debtor the sum of \$5,760.00 by February 27, 2007. Although Landreth delivered a check marked "payment in full" to the debtor's attorney on August 23, 2007, Landreth failed to comply with the Settlement Agreement, which required payment to the debtor by February 27, 2007. Second, Landreth failed to turn over the 288 produce bins to the debtor, despite several efforts by the debtor to collect the bins. Although Landreth turned over 216

produce bins as of the date of the hearing, Landreth failed to turn over any bins to Southern Produce by the May 30, 2007 deadline and failed to turn over 72 of the 288 bins as of the date of the hearing. Further, Landreth failed to pay the replacement cost of not less than \$150.00 per bin for each of the 72 bins not turned over to Southern Produce, as required by the Settlement Agreement.

Paragraph seven of the Settlement Agreement provides that “[t]he United States Bankruptcy Court for the Eastern District of North Carolina . . . shall retain jurisdiction to enter Orders, to implement and enforce the terms of th[e] Settlement Agreement and Release, or to enter money judgment for produce bins not returned or not returned in good condition.” Pursuant to this authority, the court orders Landreth to pay to Southern Produce \$151.71, which represents the interest on \$5,760.00 from February 27, 2007 to September 10, 2007, at the federal interest rate as of February 27, 2007.¹ The court orders Landreth to pay this amount on or before September 23, 2007. In addition, the court orders Landreth, by September 23, 2007, to either turn over to Southern Produce, in good condition, the seventy-two bins currently held by Landreth or pay to Southern Produce \$200.00 for each bin not returned to Southern Produce. Furthermore, the debtor is entitled to reasonable attorney fees and court costs for incurred in enforcing the Settlement Agreement. The court will enter a supplemental order specifying the amount of attorneys fees and court costs Landreth is to pay Southern Produce. Failure to comply with this order will result in substantial penalties assessed for contempt.

“END OF DOCUMENT”

¹The federal interest rate for February 27, 2007 is 4.93%.